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SB-401 Psychology: unprofessional conduct: disciplinary action: sexual acts. (2021-2022)

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Senate Bill No. 401

CHAPTER 298

An act to amend Sections 2960 and 2960.1 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 13, 2022. Filed with Secretary of State September 13, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 401, Pan. Psychology: unprofessional conduct: disciplinary action: sexual acts.

Existing law, the Psychology Licensing Law, provides for the licensure, regulation, and discipline of psychologists by the Board of Psychology. Existing law authorizes the board to refuse to issue a registration or license, to issue a registration or license with terms and conditions, or to suspend or revoke the registration or license of a registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Under existing law, unprofessional conduct includes, among other things, any act of sexual abuse, or sexual relations with a patient or former patient within 2 years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions, or duties of a psychologist or registered psychological associate.

This bill would recast and revise the circumstances under which specified sexual acts constitute unprofessional conduct. The bill would provide that unprofessional conduct includes any act of sexual behavior or sexual contact with a client or former client within 2 years following termination of therapy and any act of sexual abuse or sexual misconduct. The bill would define those terms for its purposes.

Existing law, as an exception to the provisions described above that authorize specified disciplinary action by the board, requires that an order of revocation of a registration or license be included in a specified administrative adjudication decision or proposed decision that contains a finding of fact that the licensee or registrant engaged in an act of sexual contact, as defined, with a patient or former patient within 2 years following termination of therapy. Existing law prohibits an administrative law judge from staying the revocation.

This bill would also authorize an order of revocation to be included with any proposed or issued decision that contains a finding that the licensee or registrant engaged in sexual abuse, sexual behavior, or sexual misconduct, as those terms are defined.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2960 of the Business and Professions Code is amended to read:

2960. The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been

guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

- (a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or registered psychological associate.
- (b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to themselves, any other person, or the public, or to an extent that this use impairs their ability to perform the work of a psychologist with safety to the public.
- (c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.
- (d) Impersonating another person holding a psychology license or allowing another person to use their license or registration.
- (e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.
- (f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.
- (g) Violating Section 17500.
- (h) Willful, unauthorized communication of information received in professional confidence.
- (i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.
- (j) Being grossly negligent in the practice of their profession.
- (k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.
- (l) The aiding or abetting of any person to engage in the unlawful practice of psychology.
- (m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.
- (n) The commission of any dishonest, corrupt, or fraudulent act.
- (o) (1) Any act of sexual abuse or sexual misconduct.
 - (2) Any act of sexual behavior or sexual contact with a client or former client within two years following termination of therapy.
 - (3) For purposes of this section, the following definitions apply:
 - (A) "Sexual abuse" means the touching of an intimate part of a person by force or coercion.
 - (B) "Sexual behavior" means inappropriate physical contact or communication of a sexual nature with a client or a former client for the purpose of sexual arousal, gratification, exploitation, or abuse. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues.
 - (C) "Sexual contact" means the touching of an intimate part of a client or a former client.
 - (D) "Sexual misconduct" means inappropriate conduct or communication of a sexual nature that is substantially related to the qualifications, functions, or duties of a psychologist or registered psychological associate.
- (p) Functioning outside of their particular field or fields of competence as established by their education, training, and experience.
- (q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.
- (r) Repeated acts of negligence.

SEC. 2. Section 2960.1 of the Business and Professions Code is amended to read:

2960.1. Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 2960, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. A proposed or issued decision that contains a finding that the licensee or registrant engaged in an act of sexual abuse, sexual behavior, or sexual misconduct, as those terms are defined in Section 2960, may contain an order of revocation.

